

EA



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/616,994 | 07/11/2003 | Uwe Folchert | 202-064 | 2777 |

7590 08/24/2005

Walter Ottesen
Patent Attorney
P. O. Box 4026
Gaithersburg, MD 20885-4026

EXAMINER

BURCH, MELODY M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3683

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,994

Applicant(s)

FOLCHERT, UWE

Examiner

Melody M. Burch

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in line 1 of pg. 12 the phrase "line 5" should be changed to --line or intake line 5--to provided proper antecedent basis for the term "intake line" in the claims.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 2. The phrase "directional valve and" in line 21 from the bottom is indefinite since it fails to clearly set forth the state of the directional valve in which the line is blocked. As best understood, Examiner has interpreted the claim as referring to the direction valve in the second switching state thereof. Clarification is required.

The remaining claims are indefinite due to their dependency from claim 2.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3683

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP-1243447 to Folchert et al. (using US Patent 6726189 as an English equivalent) in view of US Patent 5205322 to Merick et al.

Re: claims 2, 4, 5, and 6. Folchert et al. show in figure 1 the invention substantially as set forth in claim 2 of the instant invention and even discloses in lines 1-2 of claim 18 of the Folchert et al. patent that the pressurized medium supply vessel means includes a plurality of pressurized medium supply vessels, but does not include the arrangement of the first and third controllable directional valves with the pressurized medium supply vessel means.

Merick et al. teach in figure 4 the use of a first 234a and a third 246 controllable directional valve arranged with a pressurized medium supply vessel means in the form of a first pressurized medium space 214a and a second pressurized medium space 214b to the same extent as Applicant's invention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the arrangement of the first and third controllable directional valves with respect to the supply vessels of Folchert et al. to have included an arrangement, as taught by Merick et al., in order to provide a means of selectively choosing which supply vessel will provide the fluid for system operation in order to effect a level of redundancy in the system to improve system reliability.

Art Unit: 3683

Re: claim 3. The limitation of a first and a second check valve is disclosed in lines 3-4 of claim 18 of Folchert et al.

Re: claim 9. See figure 1 of Folchert et al. and the limitations set forth in claim 13 of Folchert et al.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP-1243447 to Folchert et al. (using US Patent 6726189 as an English equivalent) in view of US Patent 5205322 to Merick et al. as applied to claim 2 above, and further in view of US Patent 4015859 to Hegel et al.

Folchert et al. describe the invention substantially as set forth above, but do not include the limitation of an external apparatus being a tire-inflating device. Hegel et al. teaches in col. 2 lines 42-43 the use of an air in a level control system being used to control an external apparatus in the form of a tire inflating device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the vehicle of Folchert et al. to have included an external apparatus in the form of a tire inflating device, as taught by Hegel et al. in order to use the pressurized air in a way to enhance vehicle ride feel by maintaining adequate tire pressure.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

Art Unit: 3683

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6726189 to Folchert in view of Merick et al. The patent claim and the claim of the instant invention recite a closed level control system included pressurized medium supply vessel means having first and second pressurized medium spaces, first second, and third controllable directional valves, pressurized lines, etc., but the patent claim fails to include the limitation of the arrangement of the first and third controllable directional valves.

Merick et al. teach in figure 4 the use of a first 234a and a third 246 controllable directional valve arranged with a pressurized medium supply vessel means in the form of a first pressurized medium space 214a and a second pressurized medium space 214b to the same extent as Applicant's invention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the arrangement of the first and third controllable directional valves with respect to the supply vessels of Folchert et al. to have included an arrangement, as taught by Merick et al., in order to provide a means of selectively choosing which supply vessel will provide the fluid for system operation in order to effect a level of redundancy in the system to improve system reliability.

Examiner notes that the instant application is broader with respect to the sensor and is covered by *In re Goodman*, 29 USPQ 2d 2010 (Fed.Cir. 1993) in which is was

held that for the purposes of obvious double patenting a later genus (broad) claim is not patentable over an earlier species (narrow) claim.

Response to Amendment

9. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Response to Arguments

10. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Examiner notes, however, the perfecting the foreign priority and submitting a terminal disclaimer would overcome the 103 and double patenting rejections above.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3683

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mmb
mmb

August 21, 2005

Melody M. Bucci 8/21/05